VOON YUN KIM A

v.

SABAH ELECTRICITY SDN BHD

HIGH COURT SABAH AND SARAWAK, KOTA KINABALU B
CHEW SOO HO J
[CIVIL SUIT NO: K-22-120-2004]
23 MAY 2013

TORT: *Trespass to land - Erection of electric pylons - Defendant's contractor entered into plaintiff's land with purported permission from Assistant Collector of Land Revenue - Whether in compliance of ss. 11 & 16 of Electricity Supply Act 1990 - Whether plaintiff had knowledge of defendant's right to enter land - Whether knowledge imputed* C

WORDS AND PHRASES: *'Registrar' - Sabah Land Ordinance - Whether Assistant Collector of Land Revenue under Land Ordinance falls under definition of 'Registrar' under Electricity Supply Act 1990* D

The plaintiff was a co-owner of an undivided piece of land in Tuaran, holding 16/17 undivided shares of which 15/17 were E
acquired from previous owners and 1/17 acquired from the current co-owner holding the remaining 1/17 of the undivided shares, Raibaina binti Kitang ('Raibana'). The plaintiff had conducted a search at the Tuaran District Land Office and obtained F
confirmation from the Assistant Collector of Land Revenue ('ACLR') that the land was free from encumbrances before making the said acquisitions. Between November 2002 and April 2004, the defendant's contractor, HP Power Transmission Sdn Bhd had entered into the plaintiff's property, relying on an approval letter G
from the ACLR dated 5 April 2000, to conduct works related to the erection of electric pylons and the laying of power lines on the said land. In the course of such entry, the defendant and/or its contractor had, in one instance, destroyed the fencing put up by the plaintiff. In another instance, the defendant had diverted a H
path, erected two large pylons and laid extra high voltage power lines across the said land, and when one of the pylons had fallen, the defendant had replaced it without attending to the fallen pylon. The plaintiff contended that the defendant's acts and/or omissions were wrongful and in breach of statutory duties and I
obligations under the Electricity Supply Act 1990 ('the Act'), in that the defendant had failed to remove the pylons and extra high voltage power lines across the said land, making a significant and

A sizeable portion of the land unsuitable for development or any other usage. The plaintiff, therefore, brought this action for, *inter alia*, a declaration that (i) the defendant, by itself or through its contractors, was not entitled to enter the said land for its intended purpose; (ii) that the defendant had trespassed onto the said land; B and (iii) that the plaintiff was not bound by any purported dealings between the defendant and the former co-owners of the land nor was the plaintiff bound by any proceedings before the ACLR involving the defendant and the former co-owners in which the plaintiff was not a party. The plaintiff further prayed for an C injunction to compel the defendant to remove the pylons and extra high voltage power lines from the said land. Meanwhile, the defendant's defence was that it had complied with the Act by obtaining the order from the ACLR to enter the said land under s. 16(1) of the Act and had paid a sum of RM5,500 to the former D co-owners of the said land as compensation under the Act. The defendant averred that by paying the said sum, it was entitled to enter the said land pursuant to the ACLR's order under ss. 11 and 16 of the Act. The issues for the court's determination were (i) whether the defendant had been validly granted the permission E to enter the said land to carry on the works, and (ii) whether the plaintiff was bound by any dealings between the defendant and the former land owners before the ACLR granted the permission thereto.

F **Held (allowing appeal in part):**

(1) Although Raibaina was not joined as a party in the suit, that in itself did not disentitle the plaintiff as co-owner and person in possession of the said land to bring an action for trespass (*Ong Hoo Hong v. Kok Yin Weng*, refd) (para 5)

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(2) One of the former co-owners had not been served with the requisite notice under s. 11(2) of the Act and was thus assumed not to have knowledge of the defendant's intention to enter the said land to be able to exercise his right as a H co-owner under s. 11(2). Hence, the defendant could not be said to have complied with s. 11(2) pursuant to its failure to comply with service of the statutory notice. In the absence of any satisfactory evidence that the other three co-owners had allegedly consented to the wayleave sought by the defendant I and would agree to any compensation to be assessed or determined by the ACLR, there was a breach of rules against natural justice of *audi alteram partem*. (paras 9 & 11)

(3) The defendant's pleaded case was that they had the permission or order of the ACLR pursuant to ss. 11 and 16 of the Act. The defendant must therefore show that they had complied with the Act irrespective of whether the land in question fell under the National Land Code or the Land Ordinance (Sabah Cap. 68). Therefore the defendant's attempt to distinguish that the case was under the NLC and not under the Land Ordinance was untenable. (para 12)

(4) The ACLR had failed to show any statements where the former land owners had consented or objected to the permission to enter their land, either verbally or in writing. In the circumstances, permission to enter land granted or order made as to compensation by the ACLR could not be said to be properly and validly granted or made to bind them except one former co-owner, Husin bin Diatin. Thus, the court answered the first issue in the negative. (paras 16 & 17)

(5) The word 'Registrar' under the Act should apply *mutatis mutandis* to the Land Ordinance in reference to the ACLR as there is no equivalent to 'Registrar' in the Land Ordinance. Otherwise, the said permission or order of the ACLR would be *ultra vires in limine*. The meaning of 'Registrar' in the context of s. 11(10) should not be restricted to the definition in s. 2 when it would result in an absurdity and would defeat the legislative intent of s. 11 of the Act (*Tenaga Nasional Bhd v. Teobros Development*, refd). (paras 22 & 24)

(6) The plaintiff could not be assumed to have knowledge of the defendant's right to enter the land when the defendant had failed to comply with the mandatory provision under s. 11(10) of the Act. Without the requisite notice under s. 11(10) having been entered in the register document of title, for which the plaintiff had inquired from the then ACLR, having made the land search and having confirmed that there was no problem over the said land, the plaintiff would have no opportunity to know of such encumbrance of the defendant and therefore could not be faulted since land search should be the legitimate step to take to ascertain the status of the title to the said land. It was unacceptable to impute knowledge and shift the blame on to the plaintiff when it was the glaring flaw on the defendant in not complying with the provisions under the Act. (para 25)

A **(7)** However, the pylons and transmission lines were erected and in use could not be pulled down or dismantled as that would disrupt electricity supply to the public. (*Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd*, refd). (para 28)

B **Case(s) referred to:**
All Malayan Estates Staff Union v. Rajasegaran & Ors [2006] 4 CLJ 195 FC ***(refd)***
Ong Hoo Hong v. Kok Yin Weng [1965] 1 LNS 127 HC ***(refd)***
Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd [2000] 1 CLJ 695 CA ***(refd)***
C *Tenaga Nasional Bhd v. Ong See Teong & Anor [2010] 2 CLJ 1 FC* ***(refd)***
Tenaga Nasional Bhd v. Teobros Development Sdn Bhd [2008] 1 LNS 395 CA ***(refd)***

Legislation referred to:
Electricity Supply Act 1990, ss. 2, 11(2), (3), (4), (5), (10), 16(1)
D Evidence Act 1950, ss. 102, 103

For the plaintiff - Chung Jiun Dau; M/s Chung & Assocs
For the defendant - Thomas Ting (Cindy Han with him); M/s Ng & Ting

E *Reported by Lyana Shohaimay*

JUDGMENT

F **Chew Soo Ho J:**

Brief Facts

[1] The plaintiff is the co-owner of an undivided piece of land at Kg Batutai, Tuaran held under NT 04316600 ('the said land') G holding 1600/1700 undivided shares of which 1500/1700 undivided shares were acquired from previous co-owners namely Husin bin Diatin, Jamil bin Diatin and Azmi bin Diatin on 24 March 2001 and subsequently, 100/1700 undivided shares were acquired from Raibaina binti Kitang on 8 April 2002. Raibaina is still the co-H owner of the said land holding the remaining 100/1700 undivided shares. According to plaintiff, the aforesaid acquisition of those portions of the said land was made after having conducted a search at the District Land Office of Tuaran and confirmation from the Assistant Collector of Land Revenue ("ACLR") that there was I no encumbrance or problems relating to the said land.

[2] In early November 2002, the plaintiff discovered that the defendant's contractor, HG Power Transmission Sdn Bhd had entered the said land, dug a dirt road, levelled a portion of the hill and constructed a concrete footing for an electric pylon on the said land. On 7 November 2002, solicitor's letter was issued to the defendant and HP Power Transmission Sdn Bhd, ('defendant's contractor') on the instruction of plaintiff that plaintiff does not permit their entry to the said land nor to construct anything thereon as well as given them notices to remove the concrete footing failing which reliefs including injunctions, exemplary and aggravated damages will be sought. Defendant and defendant's contractor did not heed the respective notice to them and continued to enter the said land, to level a portion of the hill and then erected more concrete footings. Further notices dated 12 November 2002 were issued to defendant and defendant's contractor. There were no response to the notices but they stopped further entry to the said land. However, on or about 9 April 2004, defendant and defendant's contractor entered the said land again and reconstructed concrete footing to erect pylons on the said land. In the course of such entry, they destroyed the fencing put up by the plaintiff. Another solicitor's notice was issued on 12 April 2004 upon which the defendant stopped the entry again. Defendant relying an approval letter from the ACLR, again entered the said land in early 2004, diverted a path, erected two large metal pylons to be used for transmission of electricity and strong extra high voltage lines across the said land. Subsequently, when one of the two pylons had fallen, it was left on the hill on the said land and a new one was erected but the fallen pylon was left unattended. Plaintiff averred and contended that defendant's acts and omissions are wrongful, in breach of statutory duties and obligations under the Electricity Supply Act 1990, *inter alia*. By defendant's failure to remove the pylons and extra high voltage power lines across the said land, a significant and sizeable portion of the said land has been disabled from any other usage and unsuitable for any development or other usage. Hence plaintiff prays for a declaration that defendant by itself or through its contractors, servants and/or agents, is not entitled to enter the said land for its intended purpose; a declaration that defendant, by itself or through its contractors, servants and/or agents, had trespassed onto the said land; a declaration that the plaintiff is not bound or affected by any purported dealings between the defendant and the former co-owners of the said land nor the plaintiff bound or affected by any proceedings before the ACLR,

Tuaran involving the defendant and the previous co-owners in which the plaintiff was not a party; an injunction from entering and remaining on the said land; an injunction to compel defendant to pull down and remove the pylons, extra high voltage power lines etc. from the said land, damages, compensation under s. 16 of the Electricity Supply Act 1990, interest and costs.

[3] Defendant's defence is that prior to the said land being transferred to the plaintiff, the ACLR had pursuant to s. 16(1) of the Electricity Supply Act 1990 made an order that the defendant be allowed to enter the said land after the sum of RM5,500 as compensation ordered by the ACLR to be paid to the four previous land owners, was paid. Defendant averred that it had accordingly paid the said sum and was entitled to enter the said land pursuant to the ACLR's order under ss. 11 and 16 of the Electricity Supply Act 1990.

The Issues

[4] The trial herein as agreed by both parties is confined to the issue of liability leaving the issue of damages to be assessed if plaintiff were to succeed in her claims. Several issues on liability were submitted by both parties herein but I find that the pertinent issues for determination are:

(i) Whether the defendant had been validly granted the permission to enter the said land pursuant to the Electricity Supply Act 1990 ("the said Act") and to carry on with the work that it and/or its contractors, servants and/or agents had performed on the said land; and

(ii) If the answer to issue 1 is in the positive, whether the plaintiff is bound or affected by any dealings between the defendant and the previous land owners before the ACLR, Tuaran and any order made and/or permission granted thereto.

I add the word "validly" in the first issue as it is necessary since it involves compliance of the provisions of the said Act.

Findings Of Court

[5] The substantial facts of the case are not largely disputed by the parties. The fact that the plaintiff was and is the legal and beneficial owner in 16/17 shares of the said land and Raibaina binti Kitang was and is the owner of 1/17 share of the said land is *inter alia* an agreed fact. Although the co-owner Raibaina was not

joined as a party but only the plaintiff, that itself does not disentitle the plaintiff as co-owner and person in possession of the said land to bring an action for trespass as held in the cited case of *Ong Hoo Hong v. Kok Yin Weng* [1965] 1 LNS 127; [1965] 2 MLJ 97. Indeed, a person in possession of land not being the registered proprietor can still institute an action for trespass which can thus be brought by the person in possession or by the registered proprietor. There is no doubt that plaintiff has the *locus* to pursue her claim.

[6] The prime issue of dispute is that the defendant alleged and pleaded that it had the permission or order under ss. 11 and 16 of the Electricity Supply Act 1990 ("the said Act") from the assistant collector of land revenue ('ÁCLR') before the plaintiff had acquired the undivided shares of the said land and hence plaintiff is subject to such permission or order which the previous landowners of the said land had accepted. Hence the two main issues as aforesaid are to be determined.

First Issue - The Permission Or Order Of The ACLR Under ss. 11 And 16 Of The Said Act

[7] Defendant's pleaded case is that the permission or order of the ACLR was granted or made under s. 16 of the Act. It must therefore be incumbent on the defendant to prove pursuant to ss. 102 and 103 of the Evidence Act 1950 that defendant had duly complied with the statutory requirement under s. 16 of the said Act before such permission or order can be construed to have so complied with the statutory requirement and valid.

[8] Section 11 provides:

> 11. (1) Subject to as herein after provided, whenever it is necessary so to do for the purpose of installing any system of distribution of electricity under this Act, a licensee may lay, place or carry on, under or over any land, other than State land, such posts and other equipment as may be necessary or proper for the purposes of the licensed installation, as the case may be, and may take such other action as may be necessary to render the installation safe and efficient, paying full compensation in accordance with section 16 to all persons interested for any disturbance, damage or disability that may be caused thereby and such compensation may include an annual payment for land used for the purpose of the posts or other equipment.

(2) Before entering on any land for the purpose specified in subsection (1), the licensee shall give a notice stating as fully and accurately as possible the nature and extent of the acts intended to be done. The notice shall be substantially in the form set out in the First Schedule and the District Land Administrator shall specify a date upon which the State Authority shall inquire into any objection that may have been made as herein after provided.

(3) The aforesaid notice shall be given:

(a) in the case of alienated land, to the owner or occupier;

(b) in the case of reserved land, to the officer or any other person in charge of the reserved land or, in the absence of any such officer or person, to the District Land Administrator, and may be sent by registered post or be left at the usual or last known place of abode of the person to whom it is to be given or served by the licensee or the District Land Administrator at the expense of the licensee, either in the manner herein before provided or in the manner provided for the service of notices by any written law relating to land in force in the State where the land is situated.

(4) Any of the persons mentioned in subsection (3) may, within fourteen days of the receipt of the notice therein referred to, lodge an objection to the intended acts of the licensee. The objection may be made to the District Land Administrator, either verbally or in writing, and the District Land Administrator shall give notice of the objection to the State Authority and to the licensee.

(5) If no objection is lodged within the time limited for that purpose by subsection (4), the licensee may forthwith enter on the land and do all or any of the acts specified in the notice given under subsection (2).

(6) If an objection is lodged and is not withdrawn before the date fixed for the hearing thereof, the District Land Administrator shall hold an enquiry, giving all parties an opportunity to be heard.

(7) Upon the conclusion of the enquiry the District Land Administrator may either unconditionally or subject to such terms, conditions and stipulations as he thinks fit, make an order authorizing or prohibiting any of the acts

mentioned in the notice given under subsection (2). The order shall be substantially in the form set out in the Second Schedule:

Provided that any party who is dissatisfied with the District Land Administrator's order may within twenty-one days after the order appeal against such an order to the State Authority which may then uphold, set aside or vary the order upon such terms, conditions and stipulations as it thinks fit.

(8) The State Authority may, if it thinks fit, *in lieu* of making an order under subsection (7), direct the acquisition of any land or part of any land included in a notice given under subsection (2).

(9) The decision of the State Authority under this section shall be final.

(10) Notwithstanding any written law relating to land matters, the Registrar

(a) upon the production to him of the notice issued by the licensee under subsection (2) together with the statement by the District Land Administrator that no objection had been lodged by any of the persons mentioned in subsection (3); or

(b) upon the production to him of the original order made under subsection (7) and upon the deposit with him of a certified copy of such order, shall cause to be made on the register document of title relating to the land affected by the notice or order as the case may be, a note of the existence of the rights under such notice or order.

[9] From the notices under s. 11(2) above as shown in bundle D pp. 3-5, defendant contended that the notices had been duly served on all the four previous land owners which had complied with the requirement under s. 11(2) above. However, the notices as in D pp. 3-5 indicate that they were issued to Husin bin Diatin, Jamil bin Diatin and Raibaina binti Kitang. There is no such notice issued to Azmi bin Diatin. DW1, the defendant's wayleave officer in charge of this matter at the material time had admitted in evidence that one of the former co-owners named Azmi bin Diatin had not been served with the notice issued under s. 11(2) of the said Act and admitted that his statement that all the landowners had been duly served with such notice was

untrue. It is thus an admitted fact that the previous co-owner Azmi bin Diatin had not been served with a notice issued under s. 11(2) as required to be served under s. 11(3) of the said Act. Ostensibly, Azmi bin Diatin must be assumed not to have knowledge of the defendant's intention to enter the said land under s. 11 of the said Act to be able to exercise his right as a co-owner of the said land under s. 11(2) of the said Act.

[10] The alleged permission or order granted by the ACLR on 5 April 2000 had named all the four co-owners therein (bundle D p. 6) including the said Azmi bin Diatin as if all the four former co-owners were presumably present at the inquiry into any objection against the defendant's intended entry into their said land. However, there is no evidence that all the previous land owners except Husin bin Diatin had attended that alleged inquiry on 5 April 2000. There is also no evidence or note of the alleged permission or order of the ACLR dated 5 April 2000 that the said Husin bin Diatin was authorised by the other three co-owners to attend the inquiry on their behalf nor did the three co-owners write to express their view or non-objection, if any, as well as the right to be heard on compensation under s. 16 of the said Act before the ACLR granted the said permission or order of entry to the defendant. In addition, defendant alleged that payments had been made to all the four co-owners but it appears from the acknowledgement tendered in bundle D p. 15, only one same signature acknowledging receipt of all four alleged payments which does not prove that the three other co-owners had received their respective payment.

[11] From the facts as above recapitulated, I must hold that the defendant had failed to satisfy the requirement under s. 11(2) of the said Act by giving or serving the requisite notice on all the co-owners of the said land to allow them the opportunity to be heard of any objection. This provision under s. 11 is seen to deprive a land owner of part of his land as wayleave for the defendant or a right to enter the land and construct and lay structures such as pylon and electricity cable etc. Therefore, such legislation which seeks to deprive the right of the land owners to certain part of their lands must be construed strictly. A failure to comply with service of the statutory notice on Azmi bin Diatin, a co-owner cannot be said that s. 11(2) of the said Act has been complied with by the defendant. In the absence of any satisfactory evidence that the other three co-owners, besides Husin bin Diatin who attended the alleged inquiry before the ACLR on 5 April 2000, and also had raised no objection, had

allegedly consented to the wayleave sought by the defendant and would agree to any compensation to be assessed or determined by the ACLR, I hold that there is a breach of the rules against natural justice of *audi alteram partem* or the right to be heard before any permission or order to be granted depriving them of their right over their own property ie, the said land.

[12] The intent and purpose of s. 11 of the said Act have been succinctly explained by the Court of Appeal in the cited case of *Tenaga Nasional Bhd v. Teobros Development Sdn Bhd* [2008] 1 LNS 395; [2008] 6 MLJ 391 which defendant attempted to distinguish by stating that it is a case under the National Land Code ("NLC") and not under the Land Ordinance (Sabah Cap. 68) ("the Land Ordinance"). On this point, I must say such contention is untenable because it is the defendant's pleaded case that they had the permission or order of the ACLR pursuant to ss. 11 and 16 of the said Act. Defendant must therefore show that they have complied with the said Act irrespective whether the land in question falls under the NLC or the Land Ordinance.

[13] Section 11(5) of the said Act provides that:

> (5) If no objection is lodged within the time limited for that purpose by subsection (4), the licensee may forthwith enter on the land and do all or any of the acts specified in the notice given under subsection (2).

Subsection (4) to s. 11 provides that any of the persons mentioned in sub-s. (3) may object verbally or in writing within 14 days of receipt of the notice to the district administrator while sub-s. (3) states that a notice is to be given to the owner or occupier of the land.

[14] The Court of Appeal in *Teobros Development* (*supra*) by referring to sub-s. (5) to s. 11 of the said Act said at p. 412:

> Section 11(5) of the said Act must be viewed in its correct perspective because it does not on its own create any right of entry. This is clear because the ten sub-sections in s. 11 of the said Act take effect in sequence. They were legislatively enacted to provide a mechanism for a licensee under the said Act to obtain a right to enter land to construct electricity pylons and lay electricity cables and to protect the rights of land owners and occupants who are affected and, last but by no means least, to ensure the endorsement of the register document of title of the affected land by giving notice to those who conduct a title search in the future.

[15] Reading s. 11(2) notice in the light of s. 11(5) as enunciated by the Court of Appeal above that s. 11(5) does not on its own create any right of entry because the ten sub-sections in s. 11 take effect in sequence, the defendant must thus ensure full compliance of such provisions. In the instant case, no notice was even issued to the previous land owner named Azmi bin Diatin from whom plaintiff bought his shares of the said land. There is also no evidence that the said Azmi bin Diatin had attended the alleged inquiry before the ACLR nor did he authorise the said Husin bin Diatin who appeared to be the sole land co-owner who attended the said inquiry when such a permission or order was made by the ACLR nor that the co-owners besides Husin bin Diatin were shown to have received the alleged compensation allegedly issued or paid to them; hence they cannot be said to be bound by such permission or order made in their absence or without their consent. The Court of Appeal in *Teobros Development* (*supra*) laid down the requisite element pursuant to s. 11(2) at p. 413 that:

> For a notice under s. 11(2) of the said Act to create any right of entry under s. 11(5) of the said Act, the licensee must first obtain a statement from the District Land Administrator stating that no objection has been lodged by any of the persons mentioned in sub-s. (3) of s. 11 of the said Act, that is, the owner or occupier.

[16] It is an admitted fact by DW1's evidence that there was no such statement from the ACLR under the Land Ordinance whose core function and duties undoubtedly involve land administration as the District Land Administrator under the NLC, stating no objections from the owners or occupiers of the said land. As can be seen from the ACLR's alleged permission or order granting the defendant's entry to the said land *vide* bundle D p. 6, there is absolutely no mention that the owners or occupiers of the said land had no objections. Even if he had, it would probably be from Husin bin Diatin alone who was allegedly present but not the other three co-owners who were apparently absent; otherwise, DW1 could not have missed them and to testify to that effect. There is also no evidence that the other three co-owners had tendered any writing to the ACLR expressing non-objection. In the circumstances, permission to enter land granted or the order made as to compensation by the ACLR which were not in compliance with the provisions of s. 11 of the Electricity Supply Act 1990 and behind the back of the co-owner Azmi bin Diatin

and/or the other co-owners who were not present at the said inquiry on 5 April 2000 cannot be said to be properly and validly granted or made to bind them except Husin bin Diatin. As s. 11 of the said Act has the effect of depriving the right to own property of the land owner, no assumption or imputation of the land owner's consent or his non-objection can be made. There should be actual consent or non-objection be it verbal or in writing from the land owner or occupier and this must be incorporated in a statement by the ACLR which is not available in this case.

[17] For the above reasons, I answer the first issue in the negative.

Second Issue

[18] In the light of the first issue being answered in the negative, it follows that when the permission to the defendant's entry of the said land had not been validly granted pursuant to s. 11 of the said Act, the previous co-owners were not bound by such permission or order of the ACLR dated 5 April 2000. Flowing from that, the plaintiff who acquired the said land from the previous co-owners of the said land would not be so bound and/or affected by such permission or order of the ACLR.

[19] On the assumption that this court has erred in the finding on the first issue above, I turn to consider the relevant provision in s. 11(10) of the said Act which provides:

> Notwithstanding any written law relating to land matters, the Registrar:
>
> (a) Upon the production to him of the notice issued by the licensee under subsection (2) together with the statement by the District Land Administrator that no objection had been lodged by any of the persons mentioned in subsection (3); or
>
> (b) Upon the production to him of the original order made under subsection (7) and upon the deposit with him of a certified copy of such order,
>
> shall cause to be made on the register document of title relating to the land affected by the notice or order as the case may be, a note of the existence of the rights under such notice or order.

[20] For the interpretation and intent and purpose of this s. 11(10) above, I am guided by the Court of Appeal in *Teobros Development*'s case (*supra*) as recapitulated by learned counsel for the plaintiff in submission which I reproduce below:

> One may pose this question. Why does s. 11(10) of the said Act require a statement from the District Land Administrator stating that no objection has been lodged by the owner or occupier? The answer can be seen in s. 11(4) of the said Act which states that, the objection may be made to the District Land Administrator, either verbally or in writing. Now, since an objection could have been lodged verbally by the owner by turning up at the District Land Administrator's office, the licensee must necessarily seek a written statement from the District Land Administrator stating that no objection has been lodged by the owner or occupier. In the absence of such a written statement, the licensee is in no position to presume that there was no objection. It must be borne in mind that such a statement is an essential document which has to be produced by the licensee in order to comply with s. 11(1) of the said Act as alluded to above.

In respect of s. 11(10), the Court of Appeal concluded at p. 417:

> In order to comply with s. 11(10) of the said Act, the appellant would need to produce to the registrar of land titles their notice under s. 11(2) of the said Act together with a statement from the District Land Administrator stating that no objection has been lodged by the owner or occupier ...

The Court of Appeal elaborated at pp. 419 and 420:

> Section 11(10) of the said Act was definitely enacted for the purpose of ensuring that all s. 11 rights of entry over any land – be it by way of a notice under s. 11(2) of the said Act coupled with a no objection statement issued by the Land Administrator or an order under s. 11(7) of the said Act – should be noted on the register document of title with all convenient speed as soon as they take effect. Can this panel make a ruling which has the effect of saying that the members of the public in Malaysia are not permitted to rely on land title searches and be protected by the law when they make those searches in the land office? The answer would certainly be in the negative.

[21] This provision under s. 11(10) clearly mandates that a note of the existence of the defendant's rights to the entry onto the said land shall be caused to be made by the Registrar on the register document of title relating to the said land affected by the notice or order. From the facts of this case, it cannot be gainsaid

that there is non-compliance of this sub-s. (10) to s. 11 of the said Act. The land search as shown in bundle B pp. 30-31 shows unequivocally that there was no such note as required under s. 11(10) above was caused to be made on the register document of title of the said land. Defendant is attempting to argue that the Land Ordinance which is different from the NLC does not contain any provision for registering such note, that it applies to the NLC but does not apply to the Land Ordinance and that plaintiff is not relying on the land search to found her claim. On this contention, I must say that the mandatory requirement under s. 11(10) above is specifically provided by the said Act and it is as in the opening sentence of this sub-s. (10) to s. 11 ie, "notwithstanding any written law relating to land matters ..." which must necessarily include the Land Ordinance. The said land herein is in Sabah and it is governed by the Land Ordinance but the defendant did not obtain the permission or order from the ACLR under the Land Ordinance. Thus, the ACLR could only give the permission and make the order as there is no such provision in the Land Ordinance under s. 11 of the said Act which specifically provides for such process. It is thus the said Act wherein the alleged permission or order was granted and it must therefore be pursuant to the Act that such note under s. 11(10) of the said Act shall be caused by the ACLR to be endorsed on the document of title so as to give notice not only to the registered owners of land but also to the whole world, so to speak, of such encumbrance on the said land so that any subsequent purchaser or any other party acquiring the said land would have notice and take the title subject to such encumbrance by the defendant. By contending that since there is no provision in the Land Ordinance for such a note to be made in the register document of title and therefore there is no requirement to have such note made or endorsed, defendant is seen blowing hot and cold on the one hand contending that it was pursuant to the said Act that the permission or order was granted but on the other hand saying that s. 11(10) of the said Act does not apply because the Land Ordinance does not contain such provision to make or endorse the note. I do not countenance such contention which I find to be totally unsound. On the argument that the plaintiff did not rely on the land search, I find this to be non-issue. Whether plaintiff relied on the said land search which she apparently did as the land search was sought and produced to court by her, or otherwise, it does not relieve the defendant from its evidential burden to prove compliance of the sequential provision of s. 11(10)

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of the said Act which is a mandatory provision. A failure to comply with this mandatory provision is fatal to the defendant's claim of its right to the entry into the said land.

[22] The further contention by the defendant as to the position of "Registrar" under s. 11(10) of the Act which has no such equivalent in the Land Ordinance, I find that the "Registrar" under the said Act who deals with land matters is synonymous to the ACLR under the Land Ordinance; they should apply *mutatis mutandis*. If not, the said permission or order of the ACLR dated 5 April 2000 would be *ultra vires in limine* as the ACLR is not the Registrar under s. 11 of the said Act.

[23] As stated by the Federal Court in *All Malayan Estates Staff Union v. Rajasegaran & Ors* [2006] 4 CLJ 195, at p. 213:

> It is a settled rule of interpretation that if a construction will lead to some absurdity or some repugnance or inconsistency with the rest of the statutory provision, it may be departed from so as to avoid that absurdity or inconsistency.

[24] I agree with plaintiff's submission that the meaning of Registrar in the context of s. 11(10) should not be restricted to the definition in s. 2 when it would result in an absurdity and would defeat the legislative intent of s. 11 of the said Act which the Court of Appeal had well explained in *Teobros Development*'s case at p. 412 (*supra*).

[25] For the failure by the defendant to comply with the mandatory provision under s. 11(10) above, it cannot be construed that the plaintiff had or would have or assumed to have knowledge of the right of entry onto the said land of the defendant *vide* the permission or order of the ACLR dated 5 April 2000 or any other order when no such note was entered into the register document of title of the said land. It is untenable to argue that the plaintiff must inquire and obtain such notice of the defendant's alleged right of entry before acquiring the rights and title to the said land. Without the requisite note under s. 11(10) having been entered in the register document of title, for which the plaintiff had inquired from the then ACLR, had made the land search and having confirmed that there was no problem over the said land, plaintiff would have no opportunity to know of such encumbrance of the defendant and therefore could not be faulted since land search should be the legitimate step to take to ascertain the status of the title to the said land. It is unacceptable to

impute knowledge and shift the blame on to the plaintiff when it was the glaring flaw on the defendant in not complying with the provisions under the Act.

[26] For the foregoing reasons, I also answer the second issue in the negative.

Conclusion

[27] On a balance of probabilities and for the reasons as stated above, I hold that the plaintiff has proved her case against the defendant and that the defendant had failed to rebut the plaintiff's claim or to show that defendant had a valid permission to enter the plaintiff's land in accordance with the Electricity Supply Act 1990 to perform the work as they did.

[28] Defendant had submitted citing the case of *Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd* [2000] 1 CLJ 695, *Tenaga Nasional Bhd v. Ong See Teong & Anor* [2010] 2 CLJ 1; [2010] 2 MLJ 155 FC on the question of mandatory injunction. I agree that a permanent injunction in the circumstances where the pylons and transmission lines were erected and in use cannot be pulled down or dismantled as that would disrupt electricity supply to the public, *inter alia*.

[29] In the circumstances, I enter judgment in favour of the plaintiff for prayers (1)-(2B), damages under prayer (5) or alternative prayer (6) to be assessed by the Deputy Registrar or SAR of the High Court, interest at 5% per annum on the damages from the date of judgment to the date of realisation and costs of RM30,000. Other prayers are disallowed.